

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
MISCELLANEOUS PETITION NO.237 OF 2022**

Paneer Selvam Chinnaswami alias

Panneerselvam

... Missing Person

Chinnapillai Panneerselvam

... Petitioner

Mr. Prabhu Velar for the Petitioner.

CORAM : ARIF S. DOCTOR, J.

DATE : 02ND DECEMBER 2022

P.C. :

1. The present Miscellaneous Petition seeks two reliefs, viz., (i) the declaration/order of presumption of death under the provisions of Section 108 of the Indian Evidence Act, 1872 with respect to one Paneer Selvam Chinnaswami alias Paneer Chinnaswami Selvam alias Panneerselvam (‘the said missing person’) who is said to be missing since 08/10/2002 and, (ii) for the issuance of a Legal Heirship Certificate under the provisions of the Bombay Regulation VIII of 1827.

2. The Miscellaneous Petition has been filed by Chinnapillai Panneerselvam, the wife of the said missing person. She has produced on record two certificates issued by Navghar Police Station, Mulund dated 07/07/2015

and 30/11/2016, which certify that the said missing person has been missing from home since 08/10/2002 and in respect of whom a complaint has been registered on 12/10/2002. She has also produced, by way of an additional affidavit dated 17/08/2022, the photocopy of identity card of the said missing person. Based on these documents, she has sought a declaration in terms of Section 108 of the Indian Evidence Act, 1872 as to the presumption of death of the missing person.

3. Paragraph 4 of the Miscellaneous Petition sets out a list of only heirs and next of kin of the missing persons according to the Hindu Succession Act, 1956 with their respective residential addresses. She has averred that save and except the legal heirs mentioned in the table in Paragraph 4, there are no other legal heirs left by the missing person.

4. Considering that the Miscellaneous Petition is filed by the wife of the missing person and that the Legal Heirship Certificate is being sought for in the name of all legal heirs, the proclamation is dispensed with and the Miscellaneous Petition is taken up for final disposal.

5. As per the averments made in Paragraphs 1 and 2 of the Miscellaneous Petition, the said missing person has been missing since 08/10/2002 and has not been heard of since then by those who would have

naturally heard of him, if he would have been alive. The fact that the said missing person continues to remain missing is evidenced by the two certificates issued by Navghar Police Station, who confirmed that the said missing person has not been traced or found and have registered a complaint in respect of his absence, being Complaint No.AMR 32/2002 dated 12/10/2002.

6. Considering the documents filed by the Petitioner, I am satisfied that the Petitioner has proved the fact that Panneer Selvam Chinnaswami alias Panneer Chinnaswami Selvam alias Panneerselvam has been missing since 08/10/2002. Thus, a case has been made out under Section 108 of the Indian Evidence Act, 1872 to draw a presumption of death of Shri Panneer Selvam Chinnaswami alias Panneer Chinnaswami Selvam alias Panneerselvam.

7. The Petitioner states that the Legal Heirship Certificate is required to enable the Petitioner to make an application to mutate the names in the land records in respect of the land situated in Salem (District), Attur Taluka/Village, Tamil Nadu. All the legal heirs have consented to the grant of the Legal Heirship Certificate as prayed for. In any event, the same is being jointly issued in the name of all legal heirs. Considering this and the averments made in the Petition, I find no impediment for grant of reliefs sought by the Petitioner to issue a Legal Heirship Certificate and accordingly pass the following order :-

ORDER

- (i) I hereby declare that a presumption of death of Panneer Selvam Chinnaswami alias Panneer Chinnaswami Selvam alias Panneerselvam, who has been missing since 08/10/2002, i.e., a period of more than seven years arises under the provisions of Section 108 of the Indian Evidence Act, 1872.
- (ii) The Miscellaneous Petition is therefore allowed in terms of prayer clauses (a) and (b), as prayed for.
- (iii) The Miscellaneous Petition is disposed of in the abovesaid terms.
- (iv) Registry to act upon the copy this order and issue Legal Heirship Certificate.

(ARIF S. DOCTOR, J.)